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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/879,719	06/12/2001	Wayne R. Curtis	PSU1886 (Div.)	6448

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DANN DORFMAN HERRELL & SKILLMAN
SUITE 720
1601 MARKET STREET
PHILADELPHIA, PA 19103-2307

EXAMINER

WARE, DEBORAH K

ART UNIT	PAPER NUMBER
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1651

DATE MAILED: 05/20/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/879,719

Applicant(s)

Curtis

Examiner

Deborah Ware

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Mar 4, 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). | 6) <input type="checkbox"/> Other: |

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Claims 1-27 are presented for examination on the merits.

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 31, 2003, has been entered.

Applicants are requested to update the status of the parent case(s) for the instant file as set forth in the prior action of August 27, 2002, at page 2. Although the instant case is a divisional it is not believed by the examiner that a restriction requirement, if any was made, in the parent case was directed to the subject matter claimed in the instant file.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

1. Claims 1-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is rendered vague and indefinite for the recitation of "with a cell or microorganism" since the method is drawn to a method for culturing cells of microorganisms and not cells or microorganisms, per se. It is suggested that Applicants present the claim in proper form for what they intend to claim.

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Claim 10 is rendered vague and indefinite for the recitation of "the cells or microorganisms" which is unclear because the method is drawn to "and/or" in the preamble. Consistent use of terms is suggested. Also the term "a cell suspension" at line 5, lacks antecedent basis. It is suggested to insert after "suspension" --of cells and/or microorganisms in a-- and further to delete "comprised of" at line 5. Also the terminology "and one of cells or a microorganism" is confusing in the claim since the method is drawn to culturing cells and/or a microorganism. Also the method steps do not include a successive step for culturing after a second liner is attached to the closure. Therefore, the process steps are unclear.

Claim 13 is indefinite because the term "aerating fluid composition" lacks antecedent basis for the recitation of "the aerating fluid" at line 3. The term is not used in claim 10.

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321© may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground

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provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-27 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-22 of U.S. Patent No. 6,245,555 in view of newly cited Smith et al. (US 6,297,046).

4. Claims are discussed in a prior action of the instant case and are directed to a method of culturing cells and/or microorganisms.

5. Curtis teaches the reservoir useful for a method for processing cells. The reservoir is identical to the one claimed herein.

6. Smith et al. teach a method of culturing cells in a flexible plastic reservoir, note the abstract.

7. The claims differ from Curtis in that a method for culturing is not claimed.

8. It would have been obvious to one of ordinary skill in the art to provide for the reservoir of Curtis for a method of culturing cells as disclosed by Smith et al. The instant claims differ from the patented claims of Curtis since a method of culturing using the apparatus is not claimed. Smith does teach culturing cells in plastic containers, etc. Thus, the expectation of culturing the

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cells in the container is very high and would have been expected to successful. One of skill would have been motivated to provide for a method of culturing disclosed by Smith, et al. for use with the device disclosed by Curtis. Thus, the claims are prima facie obvious.

9. All claims fail to be patentably distinguishable over the state of the art discussed above and cited on the enclosed PTO-892 and/or PTO-1449. Therefore, the claims are properly rejected.

No claims are allowed.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Deborah K. Ware whose telephone number is (703) 308-4245. The examiner can normally be reached on Mondays to Fridays from 9:30AM to 6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Wityshyn, can be reached on (703) 308-4743. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3592.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.


DEBORAH K. WARE
PATENT EXAMINER

Deborah K. Ware

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May 17, 2003